HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.292 of 2007

Between:

Shakuntalamma …Appellant

And

Joint Collector,
Mahaboobnagar District
and six others. …Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri B. Narasimha Sharma

Counsel for respondent No.1 : Government Pleader for Revenue

10th April, 2007

Per G.S. Singhvi, C.J.

Having failed to persuade Joint Collector, Mahbubnagar (respondent No.1) to review order dated 14-4-1980, the appellant invoked jurisdiction of this Court under Article 226 of the Constitution of India, but could not convince the learned Single Judge that order dated 14-4-1980 is vitiated by any jurisdictional infirmity or an error of law apparent on the face of the record or violation of the rules of natural justice. This is the reason why she has preferred this appeal under Clause 15 of the Letters Patent.

The Facts:

By an order dated 24-7-1975, Additional Revenue Divisional Officer (LRT), Narayanpet allowed the application filed by the appellant under Section 38-E of the Andhra Pradesh (Telangana Area)

Tenancy and Agricultural Lands Act, 1950 (for short, 'the Act') and granted ownership certificate to her in respect of Survey Nos.28, 29, 62, 63, 68, 69, 110, 110/Paiki, 459, 617, 619, 620, 636 and 637 situated at Neradgom Village, Maganoor Mandal, Mahbubnagar District. Smt. Sharanamma, now represented by her LRs. challenged that order by filing an appeal, which was dismissed in default on 26-5-1978. Subsequently, the appeal was restored and was finally allowed by the Appellate Authority i.e. respondent No.1 vide his order dated 14-4-1980. After a gap of 25 years, the appellant filed a petition under Order XLI, Rule 21 of the Code of Civil Procedure for re-hearing of the appeal preferred by late Smt. Sharanamma. The same was dismissed by respondent No.1 vide his order dated 4-3-2006.

The learned Single Judge approved the last mentioned order of respondent No.1 and dismissed the writ petition by recording the following observations:

> "…….Admittedly the Joint Collector allowed the appeal filed by Sharanamma on 14-4-1980 and the petitioner moved application under Order XLI Rule 21 of CPC after lapse of 25 years. The application was absolutely barred by time. However, the Joint Collector condoned the delay and rejected the application on the ground that the order was passed on merits and, therefore, the application for rehearing the matter cannot be accepted. The petitioner has annexed a copy of the order in Case No.B7/57/79, dated 14-4-1980, passed by the Joint Collector, which would show that it is certainly not an ex parte order. Dealing with the claim of the petitioner herein, the Joint Collector observed that the petitioner herein at the relevant time was shown to be aged twenty years and not born at the time of commencement of the Tenancy Act. Therefore, he drew an inference that the petitioner herein, who was then aged 22 years, was entered as protected tenant in a bogus and manipulated manner. By any standards, the order of the Joint Collector dated 14-4-1980 cannot be treated as an ex parte order. On principle of law, the application filed by the petitioner was not maintainable and the first respondent was right in dismissing the application."

Sri B. Narasimha Sharma argued that the reason assigned by

the learned Single Judge for refusing to entertain the writ petition is legally untenable and the order under challenge is liable to be set aside because order dated 14-4-1980 had been passed without notice to the appellant. Learned counsel submitted that notice of the appeal preferred by Smt. Sharanamma under Section 90 of the Act was not served on the appellant and, therefore, the officer concerned was duty-bound to entertain the petition filed in 2005 despite the long time gap of 25 years. He then argued that order dated 24-7-1975 passed by the Additional Revenue Divisional Officer could not have been annulled by respondent No.1 without giving action oriented notice and opportunity of hearing to the appellant.

We have considered the arguments/submissions of the learned counsel, but have not felt impressed. Along with the writ petition filed by her, the appellant did not produce any document to disprove the statement of fact contained in order dated 4-3-2006 that the respondents were proceeded ex parte. This shows that the appellant had been served with the notice, but she did not appear to contest the appeal. Therefore, it is not possible to hold that order dated 14-4-1980 was passed without complying with the rules of natural justice.

We also agree with the learned Single Judge that the finding recorded by respondent No.1 about the bogus character of the entry made in favour of the appellant warranted its annulment. The finding recorded by respondent No.1 that the appellant was not entitled to be entered as protected tenant is a finding of fact and does not call for interference under Article 226 of the Constitution of India.

No other point has been argued.

In the result, the appeal is dismissed.

G.S. SINGHVI, C.J.

10th April, 2007

C.V. NAGARJUNA REDDY, J.

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